



Peter H. Jacoby
General Attorney

Room 3245F3
295 North Maple Avenue
Basking Ridge, NJ 07920
908 221-4243

June 8, 1995

RECEIVED

JUN - 8 1995

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Policies and Rules Concerning
Unauthorized Changes of Consumers'
Long Distance Carriers, CC Docket
No. 94-129 (Ex Parte Presentation)

Dear Mr. Caton:

This letter is submitted on behalf of AT&T Corp. ("AT&T") to include in the record in this proceeding the attached material relating to AT&T's requests under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA") and the Commission's implementing regulations for documents related to the Commission's Notice of Proposed Rulemaking ("NPRM") herein.¹

On November 21, 1994, AT&T filed with the Commission a FOIA request for disclosure of indices, summaries and other compilations describing and categorizing the "slamming" complaints referred to in certain portions of the NPRM. AT&T's November 21 FOIA request is attached as Exhibit 1. On December 7, 1994, the Commission responded stating that it did not have materials responsive to AT&T's request.² The

¹ Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Notice of Proposed Rulemaking, FCC 94-292, released November 10, 1994 ("NPRM").

² The Commission instead provided printouts listing all informal complaints received in 1993 and 1994 for certain broad subject classifications. See Commission December 7 Response, p. 2.

(footnote continued on following page)

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Commission's December 7 response is attached as Exhibit 2.

On December 9, 1994, AT&T filed a second FOIA request, identifying and quoting specific passages in the NPRM, and seeking disclosure of documents that identify the informal complaints referred to in the quoted NPRM passages. AT&T's December 9 FOIA request is attached as Exhibit 3. On December 30, 1994, the Commission responded to AT&T's December 9 request, as subsequently corrected and modified by AT&T.³ The Commission stated there that it had segregated a sample of approximately 430 informal complaints involving slamming incidents, and provided an attachment categorizing those complaints according to the subject matters identified in AT&T's December 9 request. A copy of the Commission's December 30 response is attached as Exhibit 6.

The attachment to the Commission's December 30 response indicated that 47 of the approximately 430 informal complaints comprising the Commission's sample related to instances of checks "disguised" as LOAs. These documents were subsequently provided to AT&T pursuant to its December 9 request and the Commission's December 30 response. AT&T's review of the complaints characterized by the Commission as relating to check/LOAs indicates that six do not involve checks at all,⁴ and seventeen involve LOAs combined with purported checks for "dial around" compensation to premises owners of public

(footnote continued from previous page)

³ By facsimile transmission to the Commission's Records Management Branch on December 14, 1994, AT&T corrected certain typographical errors and omitted lines in its December 9 FOIA request. AT&T's December 14 correction filing is attached as Exhibit 4. Additionally, on December 22 AT&T wrote to the Chief, Formal Complaints and Investigations Branch, confirming AT&T's willingness to limit the scope of the December 9 FOIA request if the Commission stated in writing the reasons for its inability to respond to the disclosure request as originally framed. AT&T's December 22 letter is attached as Exhibit 5.

⁴ See Informal Complaint Nos. 94-06239, 94-06015, 94-06146, 94-06012, 94-03573, and 94-02944.

payphones (which appears to be outside the scope of this proceeding).⁵

In accordance with Section 1.1206(a)(1) of the Commission's rules, two (2) copies of this letter are being submitted to your office.

Very truly yours,

Peter H. Jacoby /ha

Attachments

⁵ See Informal Complaint Nos. 94-04491, 94-05512, 94-05127, 94-04819, 94-04252, 94-05701, 94-04727, 94-04624, 94-05640, 94-06789, 94-06504, 94-04385, 94-014949, 94-09690, 94-012848, 94-014432, and 94-01722.

EXHIBIT 1

RECEIVED

NOV 21 1994



AT&T

Peter H. Jacoby
Senior Attorney

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Room 3245F3
295 North Maple Avenue
Basking Ridge, NJ 07920
908 221-4243

November 21, 1994

FREEDOM OF INFORMATION ACT REQUEST

Office of the Managing Director
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Sir:

Pursuant to the Freedom of Information Act, 5 U.S.C. §552 ("FOIA"), and Section 0.461 of the Commission's implementing regulations thereunder, 47 C.F.R. § 0.461, AT&T Corp. hereby requests disclosure and inspection of the documents identified in the attachment to this letter within ten (10) working days of the date hereof. Under applicable law and regulations, it is believed that these materials are not exempted from disclosure and are fully subject to inspection.

If any portion of this request is deemed denied, AT&T requests a detailed statement of the reasons for the withholding and an index or similar description of the nature of the documents withheld. In the event of a deletion, AT&T requests that a reason be stated for each such partial denial of access. To expedite this request, AT&T is willing to discuss with the Commission staff specific instances of deletions or other exemption claims in advance of a final determination by your agency.

Pursuant to FOIA and the Commission's regulations, AT&T agrees to pay reasonable charges incurred under regulation for search and copying of these materials. upon presentation of an invoice with the documents. Please contact the undersigned in advance for agreement if the search and copying fee in connection

with this request is expected to exceed five hundred dollars (\$500.00), or if your agency has any questions regarding this disclosure request.

Very truly yours,

Peter H. Jacoby /ha

Attachment

ATTACHMENT

Definitions:

"NPRM" means the Notice of Proposed Rulemaking, FCC 94-292, released November 10, 1994 in Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129.

"Slamming" means the unauthorized conversion of a customer's interexchange carrier by another interexchange carrier ("IXC"), resale carrier, or a subcontracted telemarketer.

Documents requested:

1. Provide the following documents with respect to the Commission's fiscal year 1993:

- (a) indices, summaries or other documents showing the number of complaints received by the Commission of "slamming" involving telemarketing, referred to in paragraph 1 of the NPRM;
- (b) indices, summaries or documents showing the number of complaints received by the Commission of "slamming" involving letters of agency ("LOAs"), referred to in paragraph 1 of the NPRM;
- (c) indices, summaries or other documents that (i) identify each IXC, resale carrier or subcontracted telemarketer against whom such complaints of slamming involving telemarketing were alleged; (ii) show the number of such complaints against each such entity; and (iii) show the Commission's resolution or adjudication of each such complaint, including but not limited to any assessment of fines or forfeitures against the entity or entities named in each such complaint;
- (d) indices, summaries or other documents that (i) identify each IXC, or resale carrier or subcontracted marketing agent against whom such complaints of slamming involving LOAs were alleged; (ii) show the number of such complaints against each such entity; and (iii) show the Commission's resolution or adjudication of each such complaint, including but not limited to any assessment of fines or forfeitures against the entity or entities named in each such complaint;
- (e) documents that
 - (1) show the number of complaints of slamming involving (i) contest entry forms, (ii)

prize claim forms, and (iii) charitable solicitations, referred to in paragraph 6 of the NPRM;

(2) identify each IXC, resale carrier or sub-contracted marketing agent against whom such complaints were alleged, and showing the number of such complaints against each such entity; and

(3) describe the Commission's resolution or adjudication of each such complaint, including but not limited to any fines or forfeitures assessed against the entity or entities named in each such complaint.

(f) documents that

(1) show the number of complaints of slamming involving checks made payable to the consumer, referred to in paragraph 6 of the NPRM;

(2) show the form of check or other negotiable instrument in each such complaint, and any accompanying letters or marketing literature;

(3) identify each IXC, resale carrier or sub-contracted marketing agent against whom such complaints were alleged, and showing the number of such complaints against each such entity; and

(3) describe the Commission's resolution or adjudication of each such complaint, including but not limited to any fines or forfeitures assessed against the entity or entities named in each such complaint.

2. Provide documents as specified in paragraph (a) through (f) above with respect to the Commission's fiscal year 1994.

EXHIBIT 2

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DEC 07 1994

Peter H. Jacoby, Esquire
AT&T
Room 3245F3
295 North Maple Avenue
Basking Ridge, New Jersey 07920

Re: Freedom of Information Act Request
Control No. 94-376

Dear Mr. Jacoby:

This is in reference to your Freedom of Information Act (FOIA) request, dated November 21, 1994, which was received by the Commission's FOIA Control staff on November 22, 1994. Your request seeks access to several categories of documents relating to the Commission's Notice of Proposed Rulemaking in CC Docket No. 94-129, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, FCC 94-292 (November 10, 1994). The specific categories of requested records are not repeated in this letter. Instead, a copy of the request is attached for reference.¹

In response to your request, we searched the files of the Formal Complaints and Investigations Branch, and the Informal Complaints & Public Inquiries Branch of the Enforcement Division, the only Commission offices likely to contain the requested material.

Our search determined that we do not have material that is responsive to your request. Though we compile fiscal year summaries of complaints filed, the summaries do not show the actual resolution of the complaints, nor do they contain a delineation of slamming complaints with respect to letters of agency, telemarketers, or checks as sought by your request. Generally, this information would be ascertained through review of the actual files.

While we cannot absolutely state that no other relevant materials exist within our files, our files simply are not maintained or indexed in a manner which would permit the identification or retrieval of information such as you request. Please be aware that the FOIA does not require agencies to

¹ You authorized \$500 for fees incurred on your behalf. Fees totalling \$405.96 have been accumulated for search efforts by Commission staff members (1.0 hour by GS 9 employee at \$18.72 per hour; 12.0 hours by GS 13 employee at \$32.27).

generate records in response to an information request. Agencies are simply obligated to provide access to existing documents. See e.g., NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 162 (1974); Zemansky v. EPA, 767 F.2d 569, 574 (9th Cir. 1985).

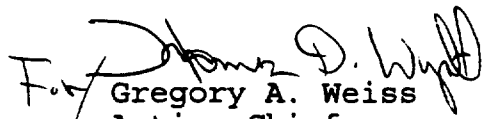
In an effort to assist you, however, we performed a computerized search of complaints relevant to your request filed with the Informal Complaints & Public Inquiries Branch for fiscal 1993 and 1994. Both reports, entitled "Case Transactions Report," include subject code information to aid in the identification or retrieval of the complaints. The following is a breakdown of the subject code classification:

- U001 Unauthorized conversion (payphones)
- U003 Letters of Agency
- P003 Unauthorized conversion (main focus
carrier marketing practices)
- UG04 Unauthorized conversion by interexchange
carriers

For your future reference, routinely available information may be inspected by the public without recourse to the Freedom of Information Act. Arrangements to inspect the complaints identified in the printouts may be made by contacting Jocelyn Frye of the Enforcement Division, who will in turn refer you to the appropriate Informal Complaints Branch staff member.² You may contact Ms. Frye at (202) 418-0960. The documents are also available through International Transcription Services (ITS), a private research and duplicating company. ITS charges \$15.00 per hour for research services and seven cents per page for duplication. ITS is located at 2100 M Street, N.W., Suite 140, Washington, D.C. 20037; telephone number (202) 857-3800. Although the Commission can be requested to duplicate these records, because of limited staff and resources, typically, such services are more expeditiously performed by ITS. The Commission's duplication charges are 17 cents per page. 47 C.F.R. § 0.465(c)(2).

We hope the foregoing information will be of assistance to you.

Sincerely,


Gregory A. Weiss
Acting Chief
Enforcement Division
Common Carrier Bureau

Enclosure

² Requests involving a large number of individual complaint files may require additional search time.

EXHIBIT 3



Peter H. Jacoby
Senior Attorney

Room 3245F3
295 North Maple Avenue
Basking Ridge, NJ 07920
908 221-4243

December 9, 1994

FREEDOM OF INFORMATION ACT REQUEST

Office of the Managing Director
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

STAMP &
RETURN

Dear Sir:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), and Section 0.461 of the Commission's implementing regulations thereunder, 47 C.F.R. § 0.461, AT&T Corp. ("AT&T") hereby requests disclosure and inspection of the documents identified in the attachment to this letter within ten (10) working days of the date hereof. Under applicable law and regulations, it is believed that these materials are not exempted from disclosure and are fully subject to inspection.

If any portion of this request is deemed denied, AT&T requests a detailed statement of the reasons for the withholding and an index or similar description of the nature of the documents withheld. In the event of a deletion, AT&T requests that a reason be stated for each such partial denial of access. To expedite this request, AT&T is willing to discuss with the Commission staff specific instances of deletions or other exemption claims in advance of a final determination by your agency.

Pursuant to FOIA and the Commission's regulations, AT&T agrees to pay reasonable charges incurred under regulation for search and copying of these materials upon presentation of an invoice with the documents. Please contact the undersigned in advance for agreement if the search and copying fee in

connection with this request is expected to exceed five hundred dollars (\$500.00), or if your agency has any questions regarding this disclosure request.

Very truly yours,

Peter H. Janetzky
HW

Attachment

ATTACHMENT

Definitions:

"NPRM" means the Notice of Proposed Rulemaking, FCC 94-292, released November 10, 1994 in Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, CC Docket No. 94-129.

"Identify," when used with reference to a complaint, means to (a) state the date of the complaint; (b) state the name(s) of the carrier(s) or other person(s) against whom the complaint was made, (c) describe the factual basis of the complaint alleged, (d) describe the response, if any, of the carrier(s) or other person(s) to the complaint, and (e) describe the Commission's resolution of the complaint.

Documents requested:

1. Documents which identify each of the complaints referred to in the following passage in paragraph 1 of the NPRM:

"The Commission received over 1,700 complaints during Fiscal Year 1993 alleging unauthorized or unknowingly authorized changes of consumers' long distance carriers, and nearly 2,500 complaints during Fiscal Year 1994."

2. Documents which identify each of the complaints referred to in the following passage in paragraph 1 of the NPRM:

". . . many of the complaints involve conversions resulting from telemarketing calls"

3. Documents which identify each of the complaints referred to in the following passage in paragraph 1 of the NPRM:

". . . a substantial number [of complaints] involve the use of potentially misleading or confusing letters of agency (LOAs) by interexchange carriers (IXCs)."

4. Documents which identify each of the complaints referred to in the following passage in paragraph 6 of the NPRM:

"Consumers, for example, have complained that the 'LOA' forms were 'disguised' as contest entry forms, prize claim forms, solicitations for charitable contributions, or checks made payable to the consumer."

5. Documents which identify each of the complaints referred to in the following passage in paragraph 6 of the NPRM:

"The Commission has also received numerous complaints against IXCs because of 'negative option LOA' forms."

6. To the extent not separately disclosed in response to Request 4 above, documents which identify each of the complaints referred to in the following passage in footnote 18 of the NPRM:

"We have received numerous complaints regarding this type [contest entry forms] of inducement/LOA.

7. To the extent not separately disclosed in response to Request 4 above, documents which identify each of the solicitations referred to in the following passage in footnote 19 of the NPRM:

"LOA forms that are combined with solicitations for charities usually are also combined with other contests. Typically, consumers are asked to enter a cash drawing and are told that by signing the entry form, some percentage of their long distance bill will be donated to a 'charitable organization' such as an 'abused family charity,' a 'missing children's fund,' or a 'national children's charity.'"

8. Documents which identify each of the complaints referred to in the following passage in paragraph 7 of the NPRM:

" . . . the numerous consumer complaints concerning LOAs indicate that some carriers have abused the flexibility granted by the current rules to create LOAs that mislead consumers with respect to the nature and purpose of the documents. Such IXCs, among other things, have combined inducements with LOAs in the same document in such a way as to mislead or confuse consumers."

9. "Based on our investigation of hundreds of consumer complaints concerning LOAs, we find that much of the abuse, misrepresentation, and consumer confusion occur when an inducement and an LOA are combined in the same document, often on the same piece of paper."

10. Documents which identify each of the complaints referred to in the following passage in paragraph 18 of the NPRM:

"We have received complaints alleging that some IXC's target non-English speaking consumers with bilingual and non-English inducements and LOAs. These consumers allege that the non-English versions of the LOA do not contain all of the text of the English versions of the LOA."

11. Documents which identify each complaint received by the Commission regarding the marketing practice referred to in the following passage in paragraph 19 of the NPRM:

"Finally, we seek comment on how consumers have been affected by the IXC marketing practice of 'encouraging' consumers who call an IXC's 800 number to switch to that IXC, even when the consumers' call were not initiated for the purpose of changing PICs."

EXHIBIT 4



Peter H. Jacoby
Senior Attorney

December 14, 1994

VIA FAX

Cathy Conley
Records Management Branch
FCC

As discussed, attached is a revised copy of the Attachment to FOIA Control No. 94-400, correcting some typos and dropped lines in paragraphs 1, 6 and 9 of the disclosure request. The new material is underlined and identified by the vertical marks at the left margin of the page. AT&T understands that these minor revisions will not result in any deferral of the Commission's response to the FOIA request. Thank you for your cooperation.

PHJ

Law Division
Room 3245F3
295 North Maple Avenue
Basking Ridge, NJ 07920
908 221-4243
FAX 908 953-8360
ATTMAIL ljacoby

ATTACHMENT

Definitions:

"NPRM" means the Notice of Proposed Rulemaking, FCC 94-292, released November 10, 1994 in Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, CC Docket No. 94-129.

"Identify," when used with reference to a complaint, means to (a) state the date of the complaint; (b) state the name(s) of the carrier(s) or other person(s) against whom the complaint was made, (c) describe the factual basis of the complaint alleged, (d) describe the response, if any, of the carrier(s) or other person(s) to the complaint, and (e) describe the Commission's resolution of the complaint.

Documents requested:

1. Documents which identify each of the complaints referred to in the following passage in paragraph 1 of the NPRM:

"The Commission received over 1,700 complaints during Fiscal Year 1993 alleging unauthorized or unknowingly authorized changes of consumers' long distance carriers, and nearly 2,500 such complaints during Fiscal Year 1994."

2. Documents which identify each of the complaints referred to in the following passage in paragraph 1 of the NPRM:

". . . many of the complaints involve conversions resulting from telemarketing calls"

3. Documents which identify each of the complaints referred to in the following passage in paragraph 1 of the NPRM:

". . . a substantial number [of complaints] involve the use of potentially misleading or confusing letters of agency (LOAs) by interexchange carriers (IXCs)."

4. Documents which identify each of the complaints referred to in the following passage in paragraph 6 of the NPRM:

"Consumers, for example, have complained that the 'LOA' forms were 'disguised' as contest entry forms, prize claim forms, solicitations for charitable contributions, or checks made payable to the

consumer."

5. Documents which identify each of the complaints referred to in the following passage in paragraph 6 of the NPRM:

"The Commission has also received numerous complaints against IXC's because of 'negative option LOA' forms."

6. To the extent not separately disclosed in response to Request 4 above, documents which identify each of the complaints referred to in the following passage in footnote 18 of the NPRM:

"We have received numerous complaints regarding this type [contest entry forms] of inducement/LOA."

7. To the extent not separately disclosed in response to Request 4 above, documents which identify each of the solicitations referred to in the following passage in footnote 19 of the NPRM:

"LOA forms that are combined with solicitations for charities usually are also combined with other contests. Typically, consumers are asked to enter a cash drawing and are told that by signing the entry form, some percentage of their long distance bill will be donated to a 'charitable organization' such as an 'abused family charity,' a 'missing children's fund,' or a 'national children's charity.'"

8. Documents which identify each of the complaints referred to in the following passage in paragraph 7 of the NPRM:

" . . . the numerous consumer complaints concerning LOAs indicate that some carriers have abused the flexibility granted by the current rules to create LOAs that mislead consumers with respect to the nature and purpose of the documents. Such IXC's, among other things, have combined inducements with LOAs in the same document in such a way as to mislead or confuse consumers."

9. Documents which identify each of the complaints referred to in the following passage in paragraph 11 of the NPRM:

"Based on our investigation of hundreds of consumer complaints concerning LOAs, we find that much of the abuse, misrepresentation, and consumer confusion occur when an inducement and an LOA are combined in the same document, often on the same piece of paper."

10. Documents which identify each of the complaints referred to in the following passage in paragraph 18 of the NPRM:

"We have received complaints alleging that some IXCs target non-English speaking consumers with bilingual and non-English inducements and LOAs. These consumers allege that the non-English versions of the LOA do not contain all of the text of the English versions of the LOA."

11. Documents which identify each complaint received by the Commission regarding the marketing practice referred to in the following passage in paragraph 19 of the NPRM:

"Finally, we seek comment on how consumers have been affected by the IXC marketing practice of 'encouraging' consumers who call an IXC's 800 number to switch to that IXC, even when the consumers' call were not initiated for the purpose of changing PICs."

EXHIBIT 5



Peter H. Jacoby
Senior Attorney

Room 3245F3
295 North Maple Avenue
Basking Ridge, NJ 07920
908 221-4243

December 22, 1994

VIA FAX

Thomas D. Wyatt, Esq.
Chief, Formal Complaints and
Investigations Branch,
Enforcement Division
Common Carrier Bureau
Federal Communications Commission
1250 23rd Street, N.W., Plaza Level
Washington, D.C. 20554

Re: FOIA Control No. 94-400

Dear Tom:

Because I understand you were out of the office yesterday due to illness, and I am unsure whether you will be in today, I am writing to follow up on our telephone conversation this past Monday regarding AT&T's FOIA request on the slamming NPRM.

When we spoke on Monday, you advised me that your office is unable to respond to the FOIA request for identification of specific complaints because the NPRM was based on conversations between your personnel and carrier analysts in the Informal Complaints Branch. You indicated that in those conversations the analysts provided their impressions regarding the types of informal complaints they were most commonly receiving, and that no memoranda or other documents recording those discussions were prepared.

In light of this information, I stated that AT&T would be willing to limit its FOIA request to (a) identification of the relative frequency of complaints of slamming through telemarketing and written solicitations, and (b) identification of specific complaints of slamming through combined check/LOAs. However, I want to make clear that AT&T is only willing to limit its request in this manner if the Commission's response to the FOIA

request states that it is unable to respond to the disclosure request as originally framed, and clearly describes (as you did in our conversation Monday) the reason for the Commission's inability to do so. Unless such an explanation is provided, AT&T will have to insist that the Commission respond to its original request.

Please feel free to telephone me if you have any questions or would like to discuss this matter further. In closing, I hope that this letter will find you in better health, and that you have a good holiday season.

Very truly yours,

A handwritten signature in cursive script, appearing to read "R. M. G. J. W.", written in dark ink.